



July 12, 2006

TO: Washington Transportation Commission

FROM: Jeff Doyle, Director, Public-Private Partnerships, WSDOT

SUBJECT: Approval process for TIPP projects

SUMMARY OF ISSUE

What formal approvals are required for a state transportation project to be selected, developed, funded and constructed under the Transportation Innovative Partnerships Program?

BACKGROUND

Since enactment of the state's first PPP law in 1993, through recent amendments to the 2005 TIPP Act, the legislature has consistently supplemented PPP laws to ensure greater degrees of accountability in the development of PPP projects. This accountability has taken the form of required public advisory votes, contract oversight panels, citizen advisory committees, and most notably, formal approvals by appointed and elected officials, including the legislature itself.

Given the patchwork of various safeguards and approval processes mandated in RCW (as well as in the draft administrative rules for the TIP program), Commissioners have requested a review of the various approvals required for transportation projects developed under the TIP program.

ANALYSIS

The process for taking a state transportation project from conception to construction is detailed below. It's important to remember that the process for reviewing and approving unsolicited proposals varies somewhat from proposals solicited by the state.

The first step in the TIP program is for WSDOT to establish a registry of transportation-related projects that are eligible for solicitation. After selecting an eligible project to solicit, WSDOT must present a draft Request for Proposals (RFP) or Request for Qualifications (RFQ) to the Commission for its review. The Commission must ensure

that the project is part of the State Transportation Plan or must itself identify the project as a priority for the state. The Commission must also verify that the contents of the draft RFP/RFQ complies with state law and administrative rules. WSDOT may then issue the RFP/RFQ, at which point public notice of the solicitation must be provided. The Commission must appoint an Evaluation Panel (to be comprised of WSDOT, OFM and JLARC officials, a disinterested third party consultant, a financial expert and a person appointed by the Commission) before any proposal may be accepted.

If a proposal is received for a project with cost estimated at greater than \$300 million, the Commission must establish an Advisory Committee to review the proposal and submit comments to the public partners. The Commission will appoint to the Advisory Committee at least five but not more than nine members, and in making appointments will consider persons or organizations offering a diversity of viewpoints on the project.

Solicited proposals are given a preliminary qualifications review by WSDOT and, if certified, are forwarded to the Evaluation Panel.

Unsolicited conceptual proposals are first reviewed by the Evaluation Panel to determine whether the proposal has met the minimum criteria for submission. If a proposal is deemed eligible, the Panel will conduct a preliminary evaluation to assess completeness, feasibility and other criteria. The Panel will then report its recommendation of further evaluation to the Commission. If the Commission determines that the proposal merits further review, the proposer is directed to prepare a detailed proposal; at this stage the Commission must also solicit competing conceptual proposals from any interested party. The Panel evaluates any competing conceptual proposals received. If a competing conceptual proposal differs significantly from the original proposal, the Panel may treat it as an unrelated, unsolicited conceptual proposal and forward it to the Commission for preliminary review. If the proposal indeed qualifies as a competing proposal, then the Panel will proceed with evaluation.

The Panel evaluates both solicited and unsolicited proposals, using criteria designated in the RFP in the case of solicited proposals, or the criteria outlined in draft WAC 468-600-250 in the case of unsolicited proposals.

If the proposed project involves tolling, the Panel must consider additional factors outlined in WAC 468-600-260. These factors include various local effects of tolling, opinions of local governments in the vicinity of the tollway, and revenue projections.

The Panel prepares a written determination of the proposal (or proposals) and reports its assessments and recommendations to the Commission. The Commission reviews the proposal, the Panel's recommendations and assessments and then determines whether the proposal should be advanced to negotiation or execution, or rejected.

Once a selection of a proposal has been made by the Commission, a 14-day appeal period is provided for protest of the selection. If a protest is received, the Commission will issue a written final decision on the protest.

Negotiation will be required before a proposal can be executed. Negotiations are referred to a WSDOT negotiation team to attempt reaching final agreement. Final agreements must undergo a legal sufficiency review by the Attorney General. Before any agreements are executed the Commission must also conduct a financial analysis that discloses all project costs, and must document the advantages of completing a project as a public-private partnership versus solely as a public venture. The Governor must appoint an Expert Review Panel (ERP) to analyze the proposed final agreement and make recommendations. Recent changes to state law requires the Governor to be consulted before the Commission may act, strongly implying that the Governor's approval is also required.

WSDOT must publish notice of the proposed agreement at least 20 days before the Commission may hold the required public hearing. The Commission must consider testimony from the hearing and must wait at least 20 days before approving or rejecting the agreement, or returning the agreement to the negotiation team for further negotiation.

If the agreement is approved and executed, WSDOT must confer with its internal auditor and accounting staff to adopt a funding methodology to apportion project and program expenses. The Office of Financial Management must review and approve this methodology.

State law requires the state legislature to approve tolls on state highways, unless such toll facility is within the boundaries of a regional transportation investment district (RTID) and the voters of this district have approved the imposition of tolls. The law does not specify whether such legislative or voter approval must occur prior to execution of a TIPP agreement.

If the proposed project is to be financed with state-issued transportation bonds, the legislature must approve any bond authorization (unless an existing bond authorization will be tapped), and it must approve the appropriation of bond proceeds through the usual and customary transportation budget process. All bonds issued by the state must be approved by the State Finance Committee, consisting of the State Treasurer, the Lieutenant Governor, and the Governor—all statewide elected offices. If alternative financing is contemplated by a final negotiated agreement, specific legislative approval (and final approval by the Governor) is required to authorize such alternative financing.

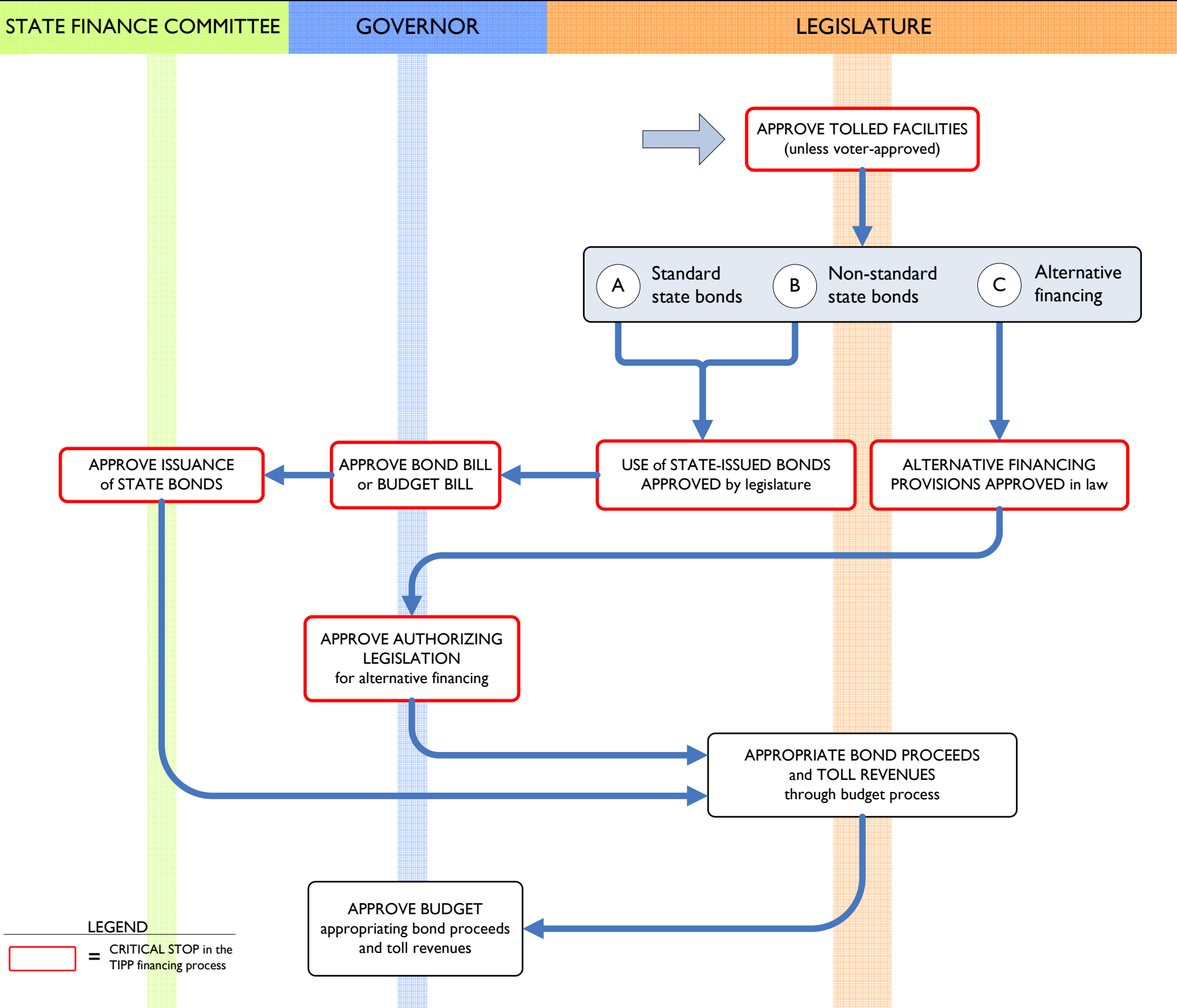
OBSERVATIONS

We offer three primary observations. First, the Legislature and Governor clearly desire that any agreements for public-private partnerships be thoroughly scrutinized, not just by the parties to the negotiations themselves (that is, the Commission and WSDOT), but also by outside experts and citizens with no specific interest in the outcome. This is evidenced throughout the statutes, ranging from the representation of a Joint Legislative Audit and Review Committee (JLARC) member on the Evaluation Panel, to the requirement for a Citizen Oversight Committee and finally, the establishment of an Expert Review Panel to evaluate any final negotiated agreements before they are executed.

Second, since the 2005 Transportation Innovative Partnerships law was passed, changes have been made that have the effect of requiring additional formal approvals of negotiated agreements by elected officials. The Governor must review tentative agreements before they can be executed and, if tolls on state highways are to be imposed as part of the agreement, the Legislature must approve those tolls as well.

The final observation: the process is clearly more rigorous – and much more cumbersome – than procuring a state transportation project in the conventional manner. While this demonstrates our elected officials' strongest concern that TIP agreements stand up to public scrutiny, the question raised is whether this important public policy goal can be achieved in a more streamlined manner. Some of the more recent legislative changes were made in the context of a larger policy debate about transportation governance generally, rather than a focused review of the TIP act and the administrative rules to carry out the program. Perhaps a review of the TIP program – and the attendant approval process – should be brought to the attention of the legislature and Governor's office.

TIPP Financing Methods: Critical stops in the financing process



TIPP Project Agreements: Critical stops in the approval process

